

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA11 MONITA SHARMA and ERIC ANDERSON,  
12 on behalf of themselves and all others  
similarly situated,

No. C-13-2274 MMC

13 Plaintiffs,

14 v.

15 BMW OF NORTH AMERICA, LLC.,

16 Defendant.

**ORDER DIRECTING PLAINTIFFS TO  
SHOW CAUSE WHY CLAIM FOR  
INJUNCTIVE RELIEF SHOULD NOT BE  
DISMISSED FOR LACK OF STANDING,  
OR, IN THE ALTERNATIVE, AFFORING  
PLAINTIFFS LEAVE TO AMEND**17  
18 Before the Court are two motions, filed August 29, 2013, by defendant BMW of  
19 North America, LLC (“BMW”): (1) “Motion to Dismiss for Lack of Standing and Failure to  
20 State a Claim”; and (2) “Motion to Strike Class Allegations.” Plaintiffs Monita Sharma  
21 (“Sharma”) and Eric Anderson (“Anderson”) have filed opposition to each motion; BMW has  
22 filed replies to each opposition. Having read and considered the papers filed in support of  
23 and in opposition to the motions, the Court rules as follows.<sup>1</sup>24 Plaintiffs, who seek to proceed on their own behalf and on behalf of a putative class  
25 of owners and former owners of certain BMW vehicles, allege they each purchased a  
26 BMW that contained a design defect. In particular, according to plaintiffs, their vehicles  
27 “were designed so that certain vital electrical components known as SDARS, RDC, and28  
1By order filed November 12, 2013, the Court took the matters under submission.

1 PDC Modules, are located in the lowest part of the vehicles' trunk," specifically, "the spare  
 2 tire well under the trunk," and, in addition, were "designed so that drainage tubes used to  
 3 drain water away from the vehicles' sun roofs are located directly next to the vital electrical  
 4 equipment that is located in the bottom of the trunk." (See FAC ¶ 1.) The drainage tubes,  
 5 plaintiffs allege, "were designed in such a way that they are prone to become clogged with  
 6 dirt, debris, leaves, and other naturally-occurring materials," and when clogged, the tubes  
 7 "come loose or flood into the trunks." (See FAC ¶ 2.) Plaintiffs allege that Sharma's  
 8 vehicle incurred a "catastrophic electrical malfunction" when water accumulated around the  
 9 electronic modules in the trunk (see FAC ¶¶ 11-12), and that Anderson "experienced  
 10 difficulties with some of the car's electronic components, expressed as a failure to start,"  
 11 due to "pooling water" in the trunk of his vehicle (see FAC ¶ 19). Plaintiffs also allege that  
 12 although the asserted defect was covered by the warranties applicable to their vehicles,  
 13 they each paid for the necessary repairs when BMW refused to cover the repair costs.  
 14 (See FAC ¶ 12-13, 20-21, 24, 136-138.) As relief, plaintiffs seek restitution, damages, a  
 15 declaration as to their rights under the warranties, and injunctive relief, specifically, an order  
 16 "requiring BMW to issue corrective actions including notification, recall, and repair of the  
 17 Class Vehicles." (See FAC at 28:4-5.)

18 In its motion to dismiss, BMW argues plaintiffs lack standing to bring their claims,  
 19 and, in the alternative, that plaintiffs have failed to state a claim upon which relief can be  
 20 granted. Because the issue of whether a plaintiff has standing is jurisdictional in nature,  
 21 see Maya v. Centex Corp., 658 F.3d 1060, 1067 (9th Cir. 2011), the Court finds it  
 22 appropriate to first address that issue before considering the other issues raised as to  
 23 plaintiffs' claims.

24 "To satisfy Article III's standing requirements, a plaintiff must show (1) [he/she] has  
 25 suffered an injury in fact that is (a) concrete and particularized and (b) actual or imminent,  
 26 not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of  
 27 the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be  
 28 redressed by a favorable decision." Id. (internal quotation, citation, and alteration omitted).

1       As noted, plaintiffs allege the asserted defect is covered by the warranties applicable  
 2 to their respective vehicles, that BMW declined to cover the costs incurred to repair  
 3 plaintiffs' vehicles, and that plaintiffs themselves paid such costs. A "quintessential injury-  
 4 in-fact" exists when plaintiffs have "spent money that, absent defendants' actions, they  
 5 would not have spent." See id. at 1069. BMW argues that plaintiffs nonetheless lack  
 6 standing to assert claims alleged on their own behalf. First, BMW contends, "[p]laintiffs fail  
 7 to plead facts establishing they incurred repair costs that BMW [ ] was obligated to cover  
 8 for free, whether under the [w]arranty that issued when their cars were new, or under the  
 9 CPOW [Certified Pre-Owned Warranty]" (see Def.'s Mot. to Dismiss at 5:16-18), because,  
 10 according to BMW, the new vehicle warranty had already expired and, in any event, neither  
 11 the new vehicle warranty nor the CPOW cover design, as opposed to manufacturing,  
 12 defects (see id. at 5:21-28). Second, BMW contends, "Anderson lacks Article III standing  
 13 because he cannot prove, by a preponderance of the evidence, that clogged sunroof drains  
 14 caused his alleged water leak and out-of-pocket expenses." (See id. at 6:16-18.) In  
 15 essence, BMW argues that because plaintiffs will be unable to establish the merits of their  
 16 claims, plaintiffs cannot establish their economic losses are fairly traceable to BMW.

17       BMW's arguments are misplaced. "[T]he threshold question of whether [a] plaintiff  
 18 has standing (and the court has jurisdiction) is distinct from the merits of his claim." Maya,  
 19 658 F.3d at 1068. A "standing analysis, which prevents a claim from being adjudicated for  
 20 lack of jurisdiction," cannot "be used to disguise merits analysis, which determines whether  
 21 a claim is one for which relief can be granted if factually true." See id. (internal quotation  
 22 and citation omitted). Whether the language of plaintiffs' warranties requires BMW to cover  
 23 the costs of the repairs incurred by plaintiffs and whether the asserted defect was causally  
 24 linked to Anderson's inability to start his vehicle are issues going to the merits of plaintiffs'  
 25 claims. In short, BMW fails to identify any basis to dismiss plaintiffs' individual claims on  
 26 standing grounds.

27       BMW next argues that plaintiffs lack standing to assert claims on behalf of at least  
 28 part of the putative class, specifically, persons who own or owned vehicles other than the

1 specific vehicle models owned by plaintiffs. Where a class action complaint encompasses  
 2 both a product the plaintiff purchased and a product he did not, the plaintiff sufficiently has  
 3 standing to proceed with claims on behalf of class members who purchased the latter if  
 4 “there is sufficient similarity between the products purchased and not purchased.” See  
 5 Astiana v. Dreyer’s Grand Ice Cream, Inc., 2012 WL 2990766 (N.D. Cal. July 20, 2012)  
 6 (collecting cases). In that regard, plaintiffs allege that “all” of the makes and models  
 7 identified by plaintiffs as the “Class Vehicles” have the same “design defect.” (See FAC  
 8 ¶¶ 30-31; see also FAC ¶¶ 1-2.) The Court finds such allegations sufficient to allege the  
 9 requisite similarity, and, consequently, suffice at the pleading stage to establish plaintiffs’  
 10 standing to assert claims on behalf of owners of vehicles other than those purchased by  
 11 plaintiffs. See Carrico v. City and County of San Francisco, 656 F.3d 1002, 1006 (9th Cir.  
 12 2011) (holding, at pleading stage, court must “accept as true” plaintiff’s factual allegations  
 13 for purposes of determining whether plaintiff has “establish[ed] standing”). Although BMW  
 14 contends plaintiffs will be unable to establish the truth of their allegations, in that, according  
 15 to BMW, “plaintiffs’ own vehicles have unique structural designs, and unique features” (see  
 16 Def.’s Mot. at 7:7-10), BMW’s argument is premature at this time and must await a later  
 17 stage of the proceedings. See, e.g., Wal-mart Stores v. Dukes, 131 S. Ct. 2541, 2551  
 18 (2011) (setting forth, in context of motion for class certification, type of showing plaintiffs  
 19 must make to establish commonality).

20 In sum, the Court is not persuaded by the arguments made by BMW with respect to  
 21 standing. Nonetheless, the Court finds it appropriate to raise sua sponte another question  
 22 concerning the issue of standing. See B.C. v. Plumas Unified Sch. Dist., 192 F.3d 1260,  
 23 1264 (9th Cir. 1999) (“[F]ederal courts are required sua sponte to examine jurisdictional  
 24 issues such as standing.”).

25 A plaintiff “bears the burden of demonstrating that he has standing for each type of  
 26 relief sought.” See Summers v. Earth Island Institute, 555 U.S. 488, 493 (2009). This rule  
 27 applies in all cases, irrespective of whether the plaintiff proceeds solely on his own behalf,  
 28 see, e.g., City of Los Angeles v. Lyons, 461 U.S. 95, 109-11 (1983) (holding that although

1 plaintiff's claim for damages based on use of chokehold during arrest "appear[ed] to meet  
 2 all Article III requirements," plaintiff lacked standing to seek injunctive relief to prevent  
 3 further use of chokehold because of the "speculative nature of his claim that he will again  
 4 experience injury as the result of that practice even if continued"), or on behalf of a class,  
 5 see, e.g., Nelsen v. King County, 895 F.2d 1248, 1249-50, 1254 (9th Cir. 1990) (holding  
 6 that although plaintiffs could proceed with claims for damages based on injuries assertedly  
 7 occurring at rehabilitation center, plaintiffs lacked standing to seek injunctive relief on behalf  
 8 of class because plaintiffs failed to show "credible threat" they would return to rehabilitation  
 9 center).

10       Here, as noted, plaintiffs allege BMW declined to cover the costs plaintiffs incurred  
 11 to repair the asserted defect. In addition to seeking restitution and/or damages to remedy  
 12 their economic losses, however, plaintiffs also seek injunctive relief in the form of an order  
 13 requiring BMW to notify owners of the subject vehicles about the alleged defect and to offer  
 14 to repair those vehicles at no cost to said persons.

15       "To seek injunctive relief, a plaintiff must show that he is under threat of suffering  
 16 injury in fact that is concrete and particularized; the threat must be actual and imminent, not  
 17 conjectural or hypothetical; it must be fairly traceable to the challenged action of the  
 18 defendant; and it must be likely that a favorable judicial decision will prevent or redress the  
 19 injury." Summers, 555 U.S. at 493 (internal quotation and citation omitted). Here, plaintiffs  
 20 fail to allege facts to meet the applicable standard. Specifically, plaintiffs fail to allege any  
 21 facts to support a finding that the requested injunctive relief, if ordered by the Court, would  
 22 redress an "actual and imminent" threat plaintiffs themselves face from BMW. See id.; see  
 23 also, e.g., Nelsen, 895 F.2d at 1254 (holding plaintiff cannot seek injunctive relief on behalf  
 24 of putative class in absence of showing plaintiff faces "credible threat of immediate future  
 25 harm" from defendant). Indeed, plaintiffs allege their vehicles already have been repaired.

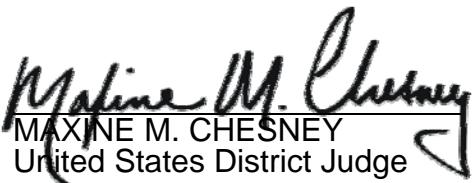
26       Accordingly, plaintiffs are hereby DIRECTED to show cause, in writing and no later  
 27 than February 7, 2014, why their claim for injunctive relief should not be dismissed for lack  
 28 of standing. Additionally, although the Court will defer ruling on the remaining arguments

1 in BMW's motion to dismiss pending resolution of the issue of standing, plaintiffs may file,  
2 no later than February 7, 2014 and limited to three pages in length, a response to the  
3 Statement of Recent Decision filed by BMW on November 25, 2013.

4 Alternatively, if plaintiffs are of the view that they could allege additional facts to  
5 support a finding that plaintiffs have standing to seek injunctive relief, plaintiffs may respond  
6 to the instant order by filing, no later than February 7, 2014, a Second Amended Complaint  
7 that includes any such additional facts. If plaintiffs file a Second Amended Complaint to  
8 add such allegations, plaintiffs may, but are not required to, otherwise amend their existing  
9 claims.

10 **IT IS SO ORDERED.**

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12 Dated: January 15, 2014

  
MAXINE M. CHESNEY  
United States District Judge

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